

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DEVIN ESPINOZA,

Defendant.

MEMORANDUM DECISION AND
ORDER GRANTING REQUEST
FOR A RECOMMENDATION TO
BOP TO RUN SENTENCE
CONCURRENTLY

Criminal Case No. 2:00-CR-56 TS

Defendant recently moved to dismiss his latest §2255 petition.¹ In his Motion to Dismiss that action, filed herein as Docket No. 162, he also requests alternative relief in the nature of a recommendation to the Bureau of Prisons (BOP) to (1) adjust his sentence to implement U.S.S.G. § 5G1.3(c); and (2) to run the federal sentence concurrently. Basically, Defendant is seeking to have approximately 26 months of his 200-month federal sentence run concurrently with his state sentence. He represents that the BOP has found

¹Case No. 2:09-CV-479 TS.

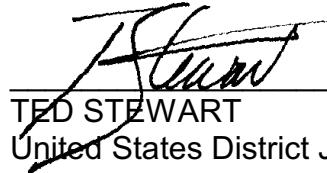
him ineligible for credit against his federal sentence for those months because he already received credit for those months against his state sentence.

The Court will grant the request and make such a recommendation. However, Defendant is reminded that while the Court may make such a recommendation, the BOP is not bound to follow that recommendation. It is only the BOP that has the authority to make a nunc pro tunc designation of the state facility in which Defendant was serving his state sentence as the place of his federal confinement. It is therefore

ORDERED that Defendant's Request for a recommendation to the BOP (Docket No. 162) is GRANTED.

DATED June 29, 2010.

BY THE COURT:



TED STEWART
United States District Judge